



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

DEC 06 2006

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Robert J. Ehrler  
Senior Corporate Attorney  
E.ON U.S.  
220 West Main Street  
Louisville, KY 40232

SUBJ: Notice of Violation

Dear Mr. Ehrler:

Enclosed is a Notice of Violation (NOV) issued to E.ON U.S. under Section 113(a)(1) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(1). In the NOV, the United States Environmental Protection Agency notifies E.ON U.S. of violations of operating permit requirements and title V requirements of the Act at the E.W. Brown Plant, operated by Kentucky Utilities, a subsidiary of E.ON U.S.

Please note the opportunity to confer outlined in the NOV. As indicated in the NOV, any request to confer should be directed to Jennifer Lewis. Ms. Lewis can be reached at (404) 562-9518.

Sincerely,

A handwritten signature in black ink, appearing to read "Beverly H. Banister".

✓ Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division

Enclosure

cc: Susan Green, KY Division of Enforcement  
John Lyons, KDAQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

E.ON U.S.

Proceedings Pursuant to  
Section 113 of the  
Clean Air Act, 42 U.S.C.  
§ 7413

)  
)  
) **Notice of Violation**  
)  
)

**NOTICE OF VIOLATION**

This Notice of Violation (NOV) is issued to E.ON U.S. for violations of the Clean Air Act (the Act) for Unit 3 at the E. W. Brown coal-fired power plant, operated by Kentucky Utilities (KU), a subsidiary of E.ON U.S. The E.W. Brown plant is located in Mercer County, Kentucky. E.ON U.S.'s headquarters and principal place of business is located in Louisville, KY. Specifically, E.ON U.S. is in violation of the title V requirements of the Act and Kentucky State Implementation Plan (SIP) requirements. This NOV is issued pursuant to Section 113 of the Act, as amended, 42 U.S.C.A. Sections 7401-7671q. The authority to issue this NOV has been delegated to the Regional Administrator of the United States Environment Protection Agency (U.S. EPA, EPA, or the Agency) Region 4 and further re-delegated to the Director, Air, Pesticides and Toxics Management Division, U.S. EPA, Region 4.

**FACTUAL AND REGULATORY BACKGROUND**

1. On September 14, 1976, the Kentucky Division of Air Pollution Control issued a construction permit for Unit 3 at the E.W. Brown plant containing a condition that the maximum heat input for this unit would be 4128 million British thermal units per hour (mmBtu/hr). The permit further states: "No deviation from the plans and specifications submitted with your application or the conditions specified herein is permitted...."
2. EPA approved the Kentucky operating permit program (under KAR 50:035) into the Kentucky SIP on July 12, 1982.
3. On July 20, 1993, the Kentucky Division for Air Quality (DAQ) issued operating permit number 0-86-068 (Revision 2) for operation of equipment at the E.W. Brown Generating Station. The permit states under the "Conditions" section that "[t]he maximum heat input shall not exceed 4128 mmBTU/hr" for Unit 3. The permit further states: "No deviation from the plans and specifications submitted with your application or the conditions specified herein is permitted...."



4. As originally configured, Unit 3 at the E. W. Brown plant was rated to produce 400 megawatts (MW). In 1997, E.ON U.S., then known as KU, increased the electrical production capability of Unit 3 to 446 MW.
5. Federal regulations at 40 C.F.R. § 70.5(b) state that any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application for a title V permit shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information to the permitting authority.
6. Data submitted to EPA by E.ON U.S., as required under the Acid Rain Program, for the period of 1997, to the present indicates that the heat input for Unit 3 at the E.W. Brown plant has exceeded 4128 mmBTU/hour for thousands of hours and for many consecutive hours at a time. A "designated representative" of E.ON U.S., in accordance with federal regulations at 40 C.F.R. § 72.21, certified under penalty of law that E.ON U.S.'s submission of acid rain data to EPA was true, accurate and complete.
7. Data received by EPA from E.ON U.S. in response to a request under Section 114 of the Act shows that, subsequent to 1997, Unit 3 significantly exceeded and continues to exceed a heat input rate of 4128 mmBTU/hour during many consecutive hours while maintaining normal design operating conditions (without resorting to overpressure operations).

### FINDINGS

8. Each and every hour of operation of Unit 3 at a heat input rate above 4128 mmBtu/hour is a violation of a condition of operating permit number 0-86-068 (Revision 2).
9. E.ON U.S., then known as KU, expanded the capability of the EW Brown Plant in 1997, resulting in Unit 3's ability to significantly exceed a heat input of 4128 mmBtu/hour on a continuous basis under normal design operating conditions. E.ON U.S. violated and continues to violate 40 C.F.R. § 70.5(b) because it did not update the title V application for the source to include the increased operational capability of Unit 3.

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, and/or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation on or before January 30, 1997. The Civil Monetary Adjustment Rule, promulgated at 40 C.F.R. Part 19 authorized an increase in civil penalties to no more than \$27,500 per day for each violation between January 31, 1997, and March 14, 2004, and no more than \$32,500 per day for each violation on or after March 15, 2004. Sections 113(a)(1) and 113(b) also provide that the



Administrator may take the same actions to enforce violations of subchapter V of the Act, 42 U.S.C. § 7661 *et. seq.*

E.ON U.S. may, upon request, confer with EPA. The conference will enable E.ON U.S. to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. E.ON U.S. has the right to be represented by counsel. A request for a conference must be made within ten (10) business days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

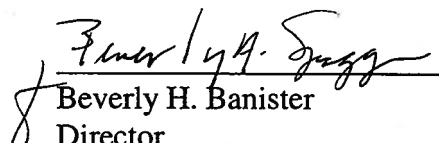
Jennifer Lewis  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
404-562-9518

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

#### EFFECTIVE DATE

This NOV shall become effective immediately upon issuance.

12/5/06  
Date

  
Beverly H. Banister  
Director  
Air, Pesticides, and Toxics  
Management Division

cc: Susan Green, KY Division of Enforcement  
John Lyons, KDAQ

